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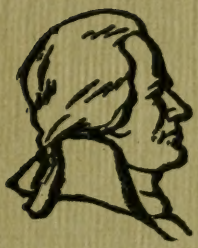
MAKING THE LAW AN ALLY

To know fundamental legal principles gives the business man confidence in conducting his affairs.



MODERN BUSINESS
TALK No. 47

ALEXANDER HAMILTON INSTITUTE
NEW YORK

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READING ASSIGNMENT

The current Reading Assignment consists of three parts: (1) this Talk, (2) Pages 1-179 of Volume 24, "Commercial Law", and (3) Lecture 24.

Law is one of the fundamental conditions of business and a general knowledge of business law is an asset of great worth to the business man. Nor is it difficult to acquire, as your reading of the Text on "Commercial Law" will prove to you. As you read you will find your own business experiences illuminated and new light thrown upon familiar things.

Making the Law an Ally

> It is essential to a contract that the parties thereto shall have come to some agreement. By this is meant that the parties are of one mind upon some proposed transaction, and that they have declared this fact.—Page 27, Chapter IV, Volume 24 of the MODERN BUSINESS Text.

Even the best of maxims, as experience shows, will at times run astray. For instance, somebody once said that "poverty is no crime." It is true for what he meant. But by and by the fine sentiment falls into bad company; we even find it sticking up for indolence and vice. Only a sharp jolt can bring it to its senses, and at length some other philosopher gives it one. "Poverty", he admits, "is no crime", and adds, "it is only punished as such!"

There's a piece of grit in this revised version of the maxim that we can borrow to put a new edge on another good maxim that's gone dull. People say "the man who is his own lawyer has a fool for a client." That, too, is true, no matter who first said it, lawyer or layman; experience has proved it. But look at the base uses to which it has descended. Look at the people—business men among them—who lay hold on it to excuse and justify their wilful ignorance of the law. But "ignorance of the law", as another legal maxim has it, "excuses no one." "Ignorance of the

law", in other words, "is no crime; it is only punished as such!"

To Know or Not to Know

This very subject came up recently in a talk between three small-town merchants.

"What do I know about law?" said one. "Nothing! or next to nothing. And I don't want to know anything about it. I've seen too many men get into trouble and lose lots of money by trusting to their own knowledge of law, instead of going to a lawyer when they needed legal advice and paying his fee. 'A little knowledge is a dangerous thing.' You can't be a half-baked lawyer and a good business man, too."

"Wait a minute, Thorne", said another of the group. "You're going too fast. Let me tell you something out of my experience."

"Yes, let's have facts", said the third. "Let's hear from Martin. I am interested in this because I have become slightly involved myself in a lawsuit, and I am just beginning to realize in what a legal atmosphere we live. Have you ever considered how many contracts you enter into, not merely every year, or month, but almost every day? I hadn't. When I bought my trolley ticket, this morning, the railway was making a contract with me. It pledged itself to transport me safely, subject to certain rules and regulations; and I could hold it to that contract. When I reached my office, I was faced by another contract, my lease of the premises. My partnership rests on

a contract. In fact, everything in the office from help to telephone, light, heat, ice, mercantile register, etc., is there as the result of a contract, either actual or implied. But go on, Martin."

An Omission That Nearly Wrecked a Home

"My father", said Martin, "died some years ago, while I was still in college. The estate went to my mother—considerable real property, but little cash. It early became necessary for her to raise more money and she decided to dispose of some of the property. A buyer was found and the price agreed upon. Can you imagine our surprise when the buyer's lawyer, after searching against defects in title, advised his client not to buy until all the children and their husbands and wives had signed the deed?

"My mother, immediately seeking legal advice, learned that she could not sell the property in her own name. The trouble was this: the friend of my father's who had drawn the will for him had omitted a single word. That omission completely changed the purport of the will. As I recall it, the clause ran thus: 'At her death, the estate is to be divided among my children, share and share alike.' What my father intended to say was—'the *remaining* estate.' This would have given mother the legal right to dispose of any part of it during her lifetime instead of making her merely the life tenant of it.

"In order to sell the land as desired, it was necessary to secure the signatures of a dozen different people, scattered all over the country, from Nova Scotia

to British Columbia. After many months of delay, she secured all the signatures but one; one relative refused to sign because he wished to keep the estate intact. The sale was off. I had to leave college, and my mother's health eventually broke down. Our circumstances had been completely changed by the omission of that single word from the will."

"Doesn't that illustrate the very point I am making?" asked Thorne. "If your father had the will drawn by a lawyer, instead of by a well-meaning friend, your mother's sufferings might have been spared."

"That is so", replied Martin. "Certainly no one but a lawyer, and an experienced one at that, should be allowed to do an important thing like drawing up a will. I realize that because I know some law. But my father knew little, and I've told you the consequences. Hence I maintain every business man should have a fair understanding of law, enough at all events to know when to hunt up a lawyer and when to keep away from one. On many occasions I have been able, thru my knowledge of my rights and liabilities, to keep myself out of situations when I would otherwise have surely needed legal help. It has enabled me to respect the rights of others while protecting my own. I have saved a good many dollars by having it."

That is the design of the current assignment in the Text and the one following it, to give to the student of business the fundamentals of commercial law so that he may steer his bark safely along the tortuous

channel of business, avoiding the dangerous rocks and shoals, and thus be spared days of doubt and delay as well as many ill-advised bargains and expenditures.

Thorne, the first speaker, admitted that there was "something" in what Martin had said, but he still felt, as he remarked, that it was better to obtain good legal advice, which was always near at hand, than to dabble oneself in the law.

When a Quick Turn Was Necessary

"Well, but what would you do in a case like this, Thorne, when you had only a few minutes to act in?" said Burke, the third merchant. "I'll tell you of an experience my brother had three or four years ago, just before the War. My brother is an electrical contractor. One time he made an installation in a large building and took over the old motors, fixtures and other stuff replaced in part payment for his bill. He took it over for $2,200, figuring he could get anywhere from $2,500 to $3,000 for it at that time. As soon as he got the material out of the building he passed the word around and several dealers came up to look it over.

"One of them was a man named McLean. He was a contractor on his own account with an office downtown and a partner in a big real estate business uptown. He didn't like my brother's price and nothing more was heard from him for two or three days. Then one morning the boy from his downtown office came up with a note to my brother, reading something like this:

" 'If you want to take $2,600 for all the motors, fixtures, etc., that you took out of the Thompson Building and offered me on Tuesday for $2,800 I'll give you that and take these off your hands at once. But you'll have to answer by my boy, because I'm planning to make a quick turn on the stuff and don't intend to use it myself as I had intended to do.'

"The boy told my brother Jim he was not going back to McLean's office, but he was going to leave his employ on the spot, and so would not carry a message back.

"Jim had rather counted on doing better than $2,600, but that was the best offer, all things considered, and there was danger that if he didn't sell out then or that week, there might not be an equally good chance for months, and he might even have to stand a loss. That was the way it was at that time. So Jim concluded to close with McLean. He tried to telephone his office but couldn't get it. He tried two or three times without success. Then he told his stenographer to write out an acceptance of the offer, put on her hat and take the message down there.

Trying to Tie the Sale Up Tight

" 'No, wait a minute', he said. 'You can't get there before 12.30 and McLean always leaves before noon and then after lunch goes to his other office. And he wants this answer in a hurry. I'll tell you what you do. You take this over to the uptown office and if he is not there, leave it, and then go downtown to the other office and confirm it.

"The girl went straight to McLean's uptown office and left the message so as to catch him at the earliest moment and then went down to the downtown office, which she found closed. She waited half an hour and then returned to my brother's office.

"While she was gone another customer for the motors and fixtures turned up at my brother's office. He was willing to take them at about the same price. He, too, wanted them for immediate resale, out of town. My brother, however, regarded the goods as sold and refused him.

"In the next morning's mail was a letter from McLean calling the deal off. 'My offer', he said, 'was contingent upon being able to resell the goods at once, and I asked you for an immediate reply.'

"My brother thought that unreasonable and doubted the truth of it. He had lost both sales, and determined to hold McLean to the contract if there were no other offers that week. With that in mind he made McLean a formal tender of the material. It was refused. Three weeks afterward he sold it for $1,700. The week after that, he sued McLean for the difference between that and his offer, $900.

"My brother's lawyer thought he had a very good case, because Jim had acted with unusual promptitude and had refused the other offer. He relied chiefly on the fact that McLean's boy had left him, which certainly had not been Jim's fault. McLean had demanded an answer by the boy. It had been impossible to give that, but Jim had done the next best thing and got word to him as quickly as possible.

"When the case went to trial, however, Jim lost. Boiled down, the law seems to be this: a contract is not a contract until there is a 'meeting of minds' on all points. McLean offered to buy if his price were accepted by return of messenger. The two essentials were a quick reply and delivery at his place of business. The fact that McLean's messenger left him and did not carry the message back was of no material consequence. What McLean desired, as was evident, was a reply within about the time that would be taken by the office boy delivering the message and making the round trip. Any reply that met these requirements would have been satisfactory to the law.

"But that was not all. The reply should have gone direct to the downtown office from which McLean sent the message. As a matter of fact, he had broken his daily habit and stayed in the downtown office to await word from my brother. The word had gone first to his other office. McLean was able to prove that he could have sold the material at $2,900 if he had received word by 12 o'clock.

"In other words, my brother should have sent his stenographer to the downtown office directly and at once, or stuck to the telephone until he got McLean, or done both. It cost him $900 plus the lawyer's fee and costs to learn that."

On such small points do profits and losses turn.

Jobs Where Incumbent Must "Know Law"

There are certain jobs which one should never leave unsupervised in the hands of anyone not versed in commercial law. The purchasing or sales department, for example, may be at any time confronted with a serious legal problem growing out of conditions that should have been nipped in the bud. Take an instance. The difference between "possession" and "title" is one that is not always clear to a business man. Yet there is an important and radical distinction made by the law and every business man should know it in order to escape an experience similar to that which befell the general manager, now deposed, of the Sanitary Furniture Company.

For many months there had been a slump in the retail furniture business. Sales had been slow and collections slower; several little houses had gone to the wall. To the furniture manufacturers, the situation was of course no less depressing. The Sanitary Company, for example, found its market cut down and the outlook anything but rosy. In this situation the company's board of directors gave evidence of an intention to do more than grumble. Having once begun to doubt the management, they could not rest until they had overhauled every method and policy.

At one of their meetings, two documents came up for attention. One was from a railroad, dated a few days back, informing the company that lightning had destroyed a car of furniture, shipped by the Sanitary Company and consigned to one of its old customers

in British Columbia, the Economy Furniture Company; the other was a telegram from the consignee, which had also been notified of the destruction of the car. The telegram read:

"Our sympathy on account your loss. Please duplicate shipment."

Mr. Hardy, the general manager, was in attendance at the meeting to explain this and other matters under inquiry.

"Mr. Hardy", asked the president, "why is it necessary for us to take this $4,000 loss? Are we fully protected from losses such as this on goods in transit?"

"Certainly we are, Mr. Pinkney", returned the general manager. "You will recall that we have printed in red ink on our order blanks and billheads the words, 'Not responsible for goods after delivery to transportation company.' That protects us."

"But I don't like that condolence on 'our loss' in the Economy's telegram", persisted the president. "I happen to know Peake of the Economy store and he's a very shrewd buyer. How was the bill of lading made out?"

"To us", replied Hardy.

"What!" exclaimed the president. "And you pretend to tell us that we are not responsible?"

"Wait a moment, Mr. Pinkney", returned Hardy. "That is easily explained. We have had so many losses thru bad debts and failures recently and the situation is so ticklish that I have been looking up the standing of every customer, new or old, before making a shipment of any value. In this case the goods

were desired at the earliest moment, so I shipped the goods with the bill of lading made out to us, as you will recollect we have done many times before for safety's sake, and wired for a report from Bradstreet. The report came in the following morning, and as usual we would have indorsed the bill of lading in favor of the Economy, but the accident, of course, did away with the necessity for that."

The President Remembers Something

The president wrinkled his forehead.

"Is that so, Pinkney?" asked the vice-president. "Have we been shipping that way?"

"Oh, yes", replied Pinkney, "we've done it before. In fact, it's not an uncommon custom. But we generally get the credit information within 24 hours and at once indorse the bill of lading over to the consignees."

"But you always insured the shipment when it did go out of our hands and yet remained in our name?" asked the vice-president. "Didn't you insure this shipment, Hardy?"

"Why, no", answered Hardy, somewhat impatiently. "Why should I? The goods are not ours after shipment. We are 'not responsible for goods after delivery to transportation company.' "

"Then what good did it do to have the bill of lading made out in our name?" asked the vice-president. "Are you going to argue that we can hold title to the goods in order to protect ourselves while waiting for the credit rating, and at the same time, when the

goods are destroyed, throw the responsibility on our customer? I'm afraid that won't go in court."

Hardy's jaw dropped. It was evident that he had never put the two ideas together. However, he pulled up quickly and replied:

"It's a trade custom and, like a lot of other trade customs, it's foolish, perhaps, but it has never played us false before and I don't believe it has this time. I believe that in spite of the conflict of sense we're protected. I believe the notice disclaiming responsibility after shipment will protect us."

"Then I can tell you that you're wrong", declared the vice-president, "and that you should have known it. The notice hasn't any significance whatever. The law runs that when a bill of lading is made out to the shipper, title remains in him, until by indorsement he changes it, and any possible loss falls on him. The loss in this case is plainly ours."

"If customs have grown up in this business that are foolish and dangerous", added the president, "it is your place, Hardy, to change them. We ought to learn by experience. If we haven't suffered loss on this account before, it is more by good luck than good judgment."

The directors, pursuing their inquiry, found other occasions for censuring Hardy, who thereupon promptly resigned.

"Let the Buyer Beware"

"Caveat emptor" and "Caveat venditor" are two legal maxims of Latin origin that business men will

do well to heed. Translated into English, they mean, as most of us know, "Let the buyer beware" and "Let the seller beware." They have to do with the buying and selling of goods. When the seller does not formally vouch for the goods he sells, "Caveat emptor" applies: the buyer must beware, must look out for himself. If a warranty is to accompany the delivery of goods, then the seller must be on guard against misstatement or exaggeration, for he may be held liable: "Caveat venditor" applies.

Warranty, therefore, looms up large in the business game. What constitutes a warranty? When does the utterance of an opinion or prophecy become an assertion of fact? These questions must be considered every time title in property changes hands. Knowledge as to whether or not a warranty is actually given may save you or your firm many bad deals and thousands of good dollars.

You have perhaps not heard the story of the farmer who sold a cow to his summer neighbor. The cow was not exactly a blue ribboner in appearance. In fact, the farmer admitted as much in answer to the buyer's question as to her general soundness and yield of milk. "She ain't much of a looker", he said, "but she's *all cow.*" Not looking for guile in this rural elysium, the city man took the cow and paid the money. The next morning, he discovered she was blind. A court has ruled that in this case there was no warranty other than that the animal was a cow. The confiding city man argued that she was not "all cow", but the point was not sustained. Nor was there

fraud; the seller actually spoke of the cow as being "not much of a looker." Caveat emptor!

Warranty and Sales Enthusiasm

Just as the buyer must determine, in making a purchase, whether a warranty accompanies the sale, and how definite it is, so must the seller or salesman realize that when a warranty is given by him, it will be given a strict construction. Merely offering an opinion or prophesying the results which a machine, commodity, animal or service may yield, is not a warranty, but a statement as to the age, weight, quality, etc., tho given loosely without special thought, is nevertheless an implied guarantee and may lead to legal entanglement and financial loss.

The business man, in short, whether manufacturer or merchant, should not only follow the development of business methods, but should also keep thoroly informed as to the legal bearings of each phase of it. No business man should be in the dark respecting his correct legal position when dealing with his fellowman. To be safe, you should know definitely where your responsibility begins and ends. The current reading assignment thru its discussion of contracts offers the means to that safety.

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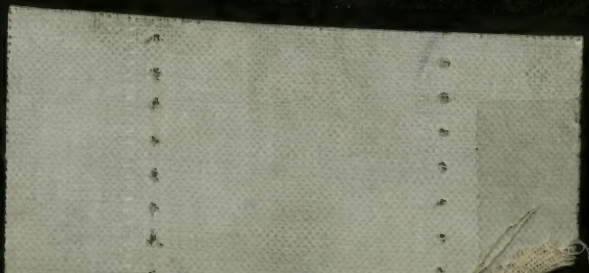

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